

REMARKS/ARGUMENTS

Claims 1-25 are pending in the application. In the Office Action dated 1/28/04, the Examiner rejected Claims 1-25 under 35 U.S.C. § 103.

The claims have been amended to clarify the invention. No new matter has been added.

Claims 2, 3, 9, 10, 19, 20, 21, 22, 23, 24, 25, 27, 28, 31, and 34 have been amended to correct typographical errors.

Claim 25 has been amended to depend from Claim 23 rather than Claim 24. In addition, Claim 25 has been amended to remove one recitation of [3S-(3R*,8R*,9R*,12R*)]-3,12-Bis(1,1-dimethylethyl)-8-hydroxy-4,11-dioxo-9-(phenylmethyl)-6{[4-(2-pyridinyl)phenyl]methyl}-2,3,6,10,13-pentaazaretetradecanedioic acid dimethyl ester, which appeared in components (a) and (b).

Claims 1-25 were rejected under 35 U.S.C. § 103 as being unpatentable over Lin et al., U.S. Patent No. 4,978,655 and Ullah et al., U.S. Patent No. 6,607,747.

U.S. PATENT NO. 6,607,747 NOT ELIGIBLE AS REFERENCE

U.S. Patent No. 6,607,747 published after the filing date of the above-identified patent application. Therefore, it can only qualify as 35 U.S.C. § 103 prior art under 35 U.S.C. § 102(e). However, Applicants respectfully submit that U.S. Patent No. 6,607,747 is not eligible as prior art under 35 U.S.C. § 103(c), which reads:

(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

As this patent and the present application are both owned by Bristol-Myers Squibb, the patent is not eligible as prior art against the present application. Note that the assignments for the subject application and the priority document for the reference can be found at 011752/0746 and 9317/0197, respectively.

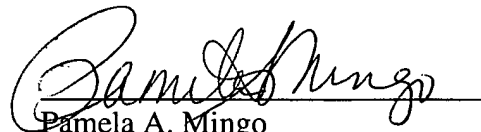
As noted by the Examiner in page 3 of the Office Action, "Lin however does not specifically teach an extruded spheronized form nor the addition of didanosine." Applicants respectfully submit that a prima facie case of obviousness cannot be made based on Lin et al., U.S. Patent No. 4,978,655 alone.

In view of the above, applicants believe the application is now in condition for allowance and respectfully request favorable action.

The Office Action of January 28, 2004 has a shortened statutory time that expired on April 28, 2004. A one-month extension is hereby requested pursuant to 37 CFR §1.136(a).

Please charge Deposit Account No. 19-3880 in the name of Bristol-Myers Squibb Company in the amount of \$110 for payment of the extension fee. An additional copy of this paper is here enclosed. The Commissioner is hereby authorized to charge any additional fees under 37 CFR §1.17 which may be required, or credit any overpayment, to Account No. 19-3880 in the name of Bristol-Myers Squibb Company.

Respectfully submitted,



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